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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHNNY GUAYLUPO,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

21-cv-3993 (MKV)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

MARY KAY VYSKOCIL, United States District Judge:

Johnny Guaylupo commenced this action against the Commissioner of the Social Security Administration, pursuant to the Social Security Act, 42 U.S.C. § 405(g), seeking review of the Commissioner's decision that Guaylupo is not entitled to Disability Insurance Benefits under Title II of the Social Security Act. The Court referred the case to Magistrate Judge Netburn. [ECF No. 7]. Guaylupo filed a motion for judgment on the pleadings, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, seeking remand of the case for a further hearing. [ECF Nos. 16, 17, 22]. The Commissioner filed a cross-motion for judgment on the pleadings, asking the Court to affirm the Commissioner's decision. [ECF Nos. 20, 21].

Magistrate Judge Netburn issued a Report and Recommendation, which recommended that the Court grant Guaylupo's motion, deny the Commissioner's motion, and remand this case. [ECF No. 23]. No party timely filed any objections to Magistrate Judge Netburn's Report and Recommendation, nor has the Court received any untimely objections.

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The Court reviews a report and recommendation to which no objections are filed for clear error. *See Fed. R. Civ. P. 72; Colvin v. Berryhill*, 734 F.

App'x 756, 758 (2d Cir. 2018); *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006). The Court has reviewed the Report and Recommendation and finds it to be well reasoned and grounded in fact and law. In short, Magistrate Judge Netburn correctly concluded that remand is required because the Administrative Law Judge (“ALJ”) did not consider Guaylupo’s non-severe mental impairments when determining his Residual Functional Capacity, and because the ALJ did not adequately explain the decision to reject a medical opinion regarding Guaylupo’s mental impairments. Accordingly, the Report and Recommendation is adopted in its entirety and the case is remanded for further proceedings consistent with the Report and Recommendation.

SO ORDERED.

Date: September 20, 2022
New York, NY


MARY KAY VYSKOCIL
United States District Judge